

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON DC 20268-0001

REVIEW OF NONPOSTAL SERVICES

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Docket No. MC2008-1

**MOTION OF EPOSTMARKS, INC.
FOR LEAVE TO REPLY TO
COMMENTS OF ELECTRONIC FRONTIER FOUNDATION
(December 8, 2008)**

Epostmarks, Inc. respectfully moves for leave to file a two-page reply to the comments filed by the Electronic Frontier Foundation (“EFF”) in this docket on November 24, 2008, and accepted by the Commission the following day. The reply is necessary to enable Epostmarks to respond to adverse claims by EFF concerning Epostmarks’ services—claims made for the first time in the proceeding on November 24.

In its November 24 comments, EFF asserts, *inter alia*, that Epostmarks and other private firms that seek to license the Postal Service’s electronic postmark (“EPM”) that bundle their own value-added applications with the underlying EPM platform would somehow expand the scope of the service offered by the Postal Service, and therefore have expanded the scope of the Commission’s review in this docket. EFF also suggests that value-added applications developed by Epostmarks for use with the EPM platform constitute new services that did not exist before August 2007, and therefore cannot be grandfathered by the Commission.

EFF did not air these claims in earlier stages of this docket. Indeed, the November 24 comments represent the first filing by EFF in this proceeding at all. EFF's belated assertion of these claims will deny Epostmarks adequate notice and opportunity to be heard unless Epostmarks has an opportunity to respond.

EFF's belated filing cannot be justified by the promulgation of Order No. 126. The clear purpose of the order was to require the Postal Service to identify and justify the non-postal services that the Postal Service was offering through licensing arrangements, but had not disclosed to the Commission in this proceeding. See Order at 5 (stating that the "record is not sufficiently developed concerning the scope and nature of the Postal Service's *licensing program*.") (emphasis added); *id.* At 6 (directing the USPS to provide "a detailed, comprehensive listing of each consumer good currently offered for sale pursuant to each license agreement it has with third-party vendors").

The Postal Service's program for licensing the EPM to third parties is not one of the licensing programs that were previously undisclosed to the Commission, and thus were not the proper subject for supplemental comments pursuant to Order No. 126. To the contrary, the Postal Service disclosed the existence and nature of EPM licensing program well before July 30, 2008, the deadline for the filing of initial intervenor comments. Indeed, those disclosures were the very thing that prompted Epostmarks to file comments on that date.

Respectfully submitted,

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December 8, 2008